

12190

No. _____

Supreme Court of Illinois

Curtiss

vs.

People

71641  7

State of Illinois }
County of Cook }

City of Chicago I do Hear before the Honorable
Robert S. Wilson Recorder of the City of
Chicago and Measuring Judge of the Recorder's Court of said
City at a term thereof begun and held at the Court House
in said City on the first Monday it being the fifth day
of June in the year of our Lord one thousand eight
hundred and fifty four and of the Independence of the
United States the Twenty eighth

Present Honorable Robert S. Wilson Recorder
J. Ballingall State Attorney Pro Tem
Cyrus P. Bradley Sheriff of Cook Co

Attest

Philip A. Hoynes Clerk

The Sheriff of Cook County returned into Court the
return issued by Order of the Common Council of the City of
Chicago in pursuance of the act establishing said
Recorder's Court for a Grand Jury selected by summon
ing the following named persons, who upon being called
answered to their names as follows Joseph F. Smith
A. W. Talley James Gurley Frederick W. Aronson R. S. Sam
H. Turrell Cyrus Patchelder William McMillan George
W. Jennings B. W. Bailey A. H. C. Avery Henry
Tucker and A. B. Stone, and gave their attendance
at this term. The Panel not being complete It

is thereupon Ordered by the Court that a Special

benue give for Eleven good and lawful men to Complete
the panel of the Grand Jury, returnable forthwith, which
was duly returned by the Sheriff of Cook County executed
by summoning the following named persons, who upon
being called answered to their names and gave their
attendance at the term of Court to wit:

James McKim James Clafford Samuel J. Hannes
J. H. Hawley Nathan S. Reed Thomas Hild John
H. Hodgson John W. Allen David O. Hatcher
Samuel J. Noble and Cyrus Smith

whom together with Joseph F.
Smith A. W. Talley, Jason Gurley Andrew K. Rosen-
munk Samuel H. Smith Ezra Batchelder William
McWilliam George W. Jennings W. R. Bailey J.
H. Cateary Henry Tucker and W. B. Stone were
duly sworn in as a Grand Jury in and for the
body of the City of Chicago, and the Court having
appointed A. W. Talley Foreman of the Grand Jury
and they having received the charge of the Court
retired to consider of their presentments

And afterwards, to wit on the Seventh day of June
in the year last aforesaid, it being one of the days of said
Term of Court, the Grand Jury chosen selected and
sworn as aforesaid, came into Court, and among other
presentments made the following presentment endorsed
a true bill, which presentment is in the words and

figures following to wit

State of Illinois }

City of Chicago }

Cook County } ss of the Sum of the Return
Court of the City of Chicago in said State and County
in the year of our Lord One thousand Eight hundred and
fifty four

The Grand Jurors, chosen selected and sworn, in
and for the City of Chicago in the County of Cook and
State of Illinois, in the name and by the authority of
the People of the State of Illinois upon their Oaths pre-
sent that Robert S. Leetich, late of said City on the
twenty second day of May in the year of our Lord One
thousand Eight hundred and fifty four in the City of
Chicago in the County and State aforesaid in and
upon one John W. Magill in the peace of the said
People then and there being, did then and there with
a certain deadly weapon, called a Knife of the length
of Eight inches and of the breadth of one inch which he
the said Robert S. Leetich in his right hand then and
there ^{had put} held, make an assault no considerable provocation
then and there appearing; with intent then and there
unlawfully to inflict upon the person of the said
John W. Magill a bodily injury Contrary to the
Statute and against the peace and dignity of the
said People of the State of Illinois

P. Ballingale

States Attorney pro tem

J^r Sudler

which said Indictment was entered in the words and
figures following to wit I En No 350 Recorder Court
of the City of Chicago June Term 1854

The People of the State of Illinois

Robert G. Cortis Indictment for assault with
a deadly weapon, A Fine Bill J M Talley
foreman of the Grand Jury

Witnesses Laura Gormig - N B Youngs

John W Magew Dr Thomas Scott

Walter Cornell

Filed June 7th 1854 P A Hoynes Clerk

And afterwards to wit on the Ninth day of June
in the year last aforesaid At being one of the days
of said Term of Court the following proceedings were
had in said Court in the foregoing entitled Cause which
proceedings are in the words and figures following to
wit:

The People v

Against with a deadly Weapon

Robert G Cortis The day comes the said People
by Patrick Ballungall States Attorney Pro Tem
and the said defendant as well in his own
proper person as by his counsel. Eliza W Tracy
D F Strother and F H Owen Esqs also comes
and he being furnished with a copy of his Indict-

ment and a list of the Jurors and Witnesses
and he being duly arraigned and forthwith demanded
of and concerning the crime alleged against him in
the said Indictment how he would acquit himself
for plea herein in this behalf says that he is not
guilty in the manner and form as he is charged
in the Indictment, and of this he puts himself upon
the Country and the people as the title, and
thereupon issue being joined

It is Ordered by the Court
that a Jury come whereupon come the Jurors of a
Jury of good and lawful men to wit.

John Adams A D Loomis Abram Gale Nathan Jackson
Nicholas Barth Hugh Brangan Levi Chipman John
Hugh William Sawyer J. H. Boyden James
Webb and John D. Webster

who being duly elected tried
and sworn well and truly to try the issue joined between
the parties according to Law and the evidence, and they
hearing the testimony of witnesses arguments of Counsel
and instructions of the Court retired in Charge of a
Sworn officer of the Court to Consider of their verdict
and afterwards came into Court and say We of
the Jury find the defendant guilty in the manner
and form as he is charged in the Indictment

And now comes the said defendant
by his Counsel and moves the Court for a new Trial
herein which Motion is in the words and figures following
to wit-

The People of the State of Illinois

Recorder's Court of the City of Chicago

Robert G. Cantelero

And now comes said Aft by B F Stricker
J M Tracy and Owen his attorneys and move the
Court to set aside the verdict and grant a New Trial
herein for the following reasons

- 1st Because the verdict was against the Law
- 2nd Because the verdict was against the Evidence
- 3rd Because the verdict was against the Law and the Evidence
- 4th Because the Court refused to allow proper evidence offered
on behalf of said defendant to go to the Jury
- 5th Because the Court admitted evidence to go to the Jury offered
on behalf of the People which was improper and irrelevant
- 6th Because the verdict was against the Instructions of the
Court.
- 7th Because the Jury rendered their verdict under a
misapprehension of the law and the evidence

Whereupon It is ordered by the Court that the defendant
be remanded to the custody of the Sheriff of Cook County.

And now afterwards to wit on the Tenth day of June
in the year last aforesaid the following proceedings were
had and entered of record in the foregoing entitled Cause
which proceedings are in the words and figures following
to wit

The People v

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Robert G. Leutyp ^{Against with a deadly}
Weapon And now again
as this day comes the said People by P. Ballingale
State Attorney Pro tem and the said defendant as
well in his own proper person as by his counsel aforesaid
also comes And the Court having fully advised
himself on the Motion heretofore filed in this Cause
for a New Trial Orders that the same be permitted
to which ordering by the Court the said defendant by
his counsel excepts

And now again comes the said defendant
by his counsel and moves the Court in arrest of the
Judgment in this Cause, which motion is in the words
and figures following to wit

State of Illinois Cook County ss

People of State of Illinois

Robert G. Leutyp

Recorder Court of the
City of Chicago, Term Term
1884

The said Robert G. Leutyp by Tracy and Storke his attys
moves the Court in arrest of Judgment in this Cause for
the following reasons

1st Because the Indictment in this Cause is defective
and insufficient in law

2^d Because the Indictment in this Cause does
not allege any offence to be committed which

is indictable under the Statute of the State of Illinois

3^d Because the offence charged in the Indictment is only alleged by way of recital and not by positive averment.

4th Because the Record in this Cause shows that Judgment cannot be legally rendered against the defendant.

5th And for other good and sufficient reasons apparent upon the face of the Indictment and the Record in this Cause

Tracy & Brother Attorneys
for def^d

And the Court having heard the argument of Counsel on said Motion Orders that the same be overruled to which order by the Court the defendant by his Counsel excepts

And now to wit on the day and year last aforesaid it being one of the days of said Term of Court the following proceedings were had in the foregoing entitled Cause and entered of Record herein as follows to wit.

The People vs

44 " Against a deadly Weapon
Robert S. Leutyp

And now again comes the said People by Patrick B. Callaghan State Attorney Pro

ten, and the said defendant as well in his own
proper person as by his Counsel also comes, and
neither the said defendant; nor his Counsel for him
saying anything further why the Sentence of the Court
should not now be pronounced against on the verdict
of jury herein rendered

It is Ordered and adjudged by the
Court that the said defendant Robert G. Gentry
be taken from the Bar of this Court to the Common
Jail of Cook County from whence he came, and
the Jailor of said County is hereby required and
commanded to take the Body of the said Robert G.
Gentry and confine him in said Jail. in safe and
secure Custody for and during the space of three months
from and after the delivery hereof

It is further Ordered by the Court that the
said defendant be fined the sum of Five dollars
and that he pay the Costs of this prosecution, and
that he stand committed to the Custody of the Sheriff
of Cook County, until said Fine and Costs as
aforesaid are duly paid

The People of the
State of Illinois

Records Court of the City
of Chicago June Term A.D. 1854

Robert G. Curtis

Indictment under fifty Second
Section of Chapter Thirtieth Revised Statutes for an
assault with a deadly weapon with intent to do bodily
harm

BE it remembered that upon the trial of
the above entitled Case John W. Mabbill was
introduced as a witness for the State and being
sworn deposed and said. I am Deputy Clerk
of the Circuit Court of Cook County. I reside
at No 158 Madison Street in this City. I am
acquainted with Curtis. On the Night of May 22d
I went from the Office at a late hour to my
boarding house. I met my room mate Mr Cornell
in the parlor conversed with him a few moments.
lay down upon the sofa and fell asleep. Cornell
awoke me after a little time saying Curtis was in the
Kitchen or back door. We went into the back part
of the house for protection the lady I heard some one
say Curtis had gone I then went to the front door
learned that met some one and was immediately struck
with a sharp instrument I caught hold of the person
pulled him into the house and whirled him round
against the wall we tussled for a few seconds Mr
Cornell came pushed me aside he seized hold of
the person and threw him on the floor. I went for a
light came back and took knife or instrument from Curtis

hand which was presented being a ~~sharp~~ ^{sharp} blade sharp at point & on both sides blade an inch long. handle six inches long covered with blood. he inflicted no wound after I got him into the house. This was 12 O'clock at night - I was confined to the house two weeks. might have gone out sooner but did not like to

Crap Examined Mrs Young was Ironing in the Dining room when some one was heard talking with her. There is a fence on either side of the lot on which the House stands separating it from the lots on either side, and a space between it and the House west. The Dining Room is in the rear part of the House. Cornell first told me of Curtis presence. Heard some one say He has got over the fence this remark led me to believe Curtis had gone to front part of the house. Went to back part of the house to see that no accident happened to the woman. some minutes had elapsed after. I heard some one say Curtis had gone over the fence before. I went to front door. I did not run to the door Curtis & myself have boarded at the house together. When I commenced nursing there I occupied the same room that was occupied by Cornell. have been told that Curtis had occupied the same room I was in no way instrumental in causing Curtis to leave the house. I made no representations to Mr Young before Curtis left regarding there in reference to an intimacy between Mr Curtis & Mrs Young for the purpose of getting Mr Curtis out of the house. I did not state any thing to Mr Young to that effect or purpose. I did not to Mrs Young after Curtis had left the house

I spoke in reference to Mr Curtis on account of some
anagances. I said he was not a gentleman and ought
to be whipped. I heard some of the boarders say
that it would be a good plan to catch Curtis and
Aphide him when he was prowling about the house
I said it was a good plan. Curtis and myself have
not been on good terms. had a conversation with
him last March. He said I had interfered in his
business. I said I had not. It was about a fight
between him and Young. I said I thought Young
seized him right because Curtis had struck Young
first. This was the only reason I ever gave. When
I was at the front door on the night of this assault
I was in the act of leaning out. Upon one occasion
I came up into this Court Room. and called
Curtis from his desk to speak with him come
to see him on other business. This was but a
little time after the news between Mr Curtis and
Mr Young. The subject of our conversation was the
charge that I had interfered in a quarrel between
Mr Young & Curtis. I had not learned that this quarrel
originated because of intimacy between Curtis & Mrs
Young. The anagances of which I spoke were from
Curtis to Mrs Young. These anagances were following
her about threatening her. and threatening to break
up the boarding house. When I took Curtis aside
in the Court House I spoke with him possibly ten
minutes. perhaps only five. I set a hat with Young
that he done not ~~try~~ to give Curtis an almighty
licking I should certainly have injured Curtis

after he cut me if Cornell had not interfered. Mr Young employed Counsel to prosecute this case. I did not engage to pay counsel but shall properly do so in part. It was the wish of the boarders generally that Counsel should be engaged. I have instituted a civil suit against Mr Curtis. I swore out a capias on Saturday night last late in the Evening.

The Witness was here asked by the counsel for Plaintiff the following question to wit. At what sum did you lay your damages in your Affidavit to hold to bail; To this question the People by their Counsel Objected on the ground that the affidavit was the best evidence the objection was sustained by the Court and the witness was directed not to answer the question. To which Opinion of the Court in excluding the answer to this question the Plaintiff by his Counsel then and there excepted. The Witness was then shown ~~the~~^{an} affidavit ~~he~~^{he} afterwards offered in Evidence and said this is my affidavit. Witness he Examined by the People.

The threats which Mr Curtis had made to this lady were the subject of conversation at the table three or four times a week. It was the subject of conversation that Curtis had made threats while Mrs Young was alone and unprotected. In answer to question asked by the Counsel by the People the Witness replied Curtis was suspected as talked among the boarders the Witness to be the person who threw stones and rang the door bell. To this answer the Plaintiff

by his Counsel Objected. The Court overruled the
Objection on the ground it was same compensation proved
by Defendant. Court overruled the objection
and admitted the answer of the witness as evidence
to which Opinion of the Court the Defendant by
his Counsel then and there excepted.

Walter Connell being duly sworn deposed and
said. I had been sitting in the Parlor with
Mr Magill I heard the sound of voices in the
Dining room. I heard Mrs Young in the Dining
room speaking apparently with some one in the
back part of the house. I could not hear what
was said. I heard Mrs Young say You had at
least there with a stick in your hand. I looked
through and saw Mrs Young go out into the
Kitchen and back again Mrs Young said "he
has gone over the lane fence. I soon heard a
noise in the hall I went into the hall and got
hold of some body Magill asked me if I had
got him, it was dark and I could not tell
who was there I took hold of the person and
threw him down and held him until the
boarders came down stairs. I got out slightly
Magill took the instrument out of Curtis hand
I took them to send for the Police. The Police
came and took Curtis away. Curtis has talked
to me two or three times saying he would be
revenge on Magill. ^{by Off Counsel.} Cross Examined.
He said Magill had interfered with

him and got him turned away. I don't think
Curtis ever spoke to me about Mrs Young. There
was no light in the parlor at the time. Magill went
to back door and to the front door too. I do
not recollect that a word was said between
Magill & me about catching Curtis. I supposed
Magill went out to catch Curtis. Mrs Young
came in and said Curtis had gone I do not
know where Magill was at this time. I think
I did not see Curtis. Magill scuffle I find felt
them in the vestibule. When I came out I did
not say anything till I enquired some one was
cutting me. I saw Curtis dead the next day ^{that} ~~how~~
he was lincised, some one I don't know who
put his foot upon Curtis neck. Curtis face
was bloody. his nose was bleeding. I don't know
but some one said kill him. I think some one
said the blamed Rascal ought to be killed. I
was holding Curtis down at this time. I did
not see Magill when Police man took Curtis
after I had Curtis down I looked up and
saw a gash in Magill's neck. I went to the
door of Young's house one night with Curtis when
Curtis rang the Bell, ^{violently and} went away
while I was getting my
night key to open the door, during the Examination
of this witness an instrument was shown him
and witness said it looked like the instrument
taken from Curtis' hand and he thought it
was the same. There is a little room which
the front door of the house opens into. It may
be 12' by 12' square. There was no light in the hall

it was dark outside. In my conversations with Curtis he said Magill had said something to Mrs Gaynes which caused him to be turned out of the house. I am quite positive that at the time of the scuffle I said nothing about taking the knife out of Curtis hand and cutting his throat. I went out into the hall to help Magill secure Curtis. I knew Curtis was out there by the sound of his voice. I did not hear Magill say he would go out there for Curtis it was some minutes after I heard Curtis before the scuffle took place.

I think it very likely that Magill and I have spoken about punishing Curtis. we all said it ought to be done. I don't know who Curtis came to see. I have seen him several times in the house. do not know of his addressing any one. I have seen Curtis go into Mr Butcher's

Room
Mr Scott being duly sworn deposes and says
I am a Physician and Surgeon
and a graduate of Medical College Edinburgh
Scotland I have practiced twenty three years
On the night of May 22^d I was called
between 12 and 1 o'clock to the house No
158 Madison Street. Found Mr Magill in bed
in an upper chamber. He had bled consid-
erably. I saw blood in the Hall and on the
stairs. He had probably lost 20 ounces of blood
his collar was drenched with blood. He was
wounded on the left side of the neck with a

sharp instrument it had entered near the occiput and Extended round to the angle of the jaw. I think the wound was an inch deep at the place where the instrument entered, was less as it passed round the main artery might have been one fourth of an inch below the depth of the wound, if this artery had been cut death must have followed. I think the whole length of the blade of the instrument must have entered. If the blade had been continued the same depth all the way round it must have caused death. I attended Magill three days an instrument was there shown witness. witness said this instrument would produce the wound.

The Counsel for the People here offered in Evidence the instrument used by Leunis. The introduction of this instrument was objected to by Defendant through his Counsel. because it was not the instrument described in the Indictment. The Court overruled the objection and admitted the instrument in Evidence. To this Opinion of the Court the Defendant by his Counsel then and there Excepted

Chap Examined

The first blood I saw was at the foot of the stairs in the back part of the house. I saw no blood on the threshold. I wrote an article in reference to the facts in the case. The article was not published. The article was in answer to another which I thought one sided. There was but little blood in the vestibule

The foregoing was all the Evidence offered by the People in this case.

On the part of the Defense the following affidavit was offered and read in Evidence

"State of Illinois)
Cook County / S.S.

John W. Magill of the City of Chicago, County of Cook and State of Illinois being duly sworn depose and say that on the night of the 22^d of May last this deponent was at his boarding house on Madison Street in the City of Chicago and State aforesaid and further that the deponent's attention was arrested by an alarm that some one was within the yard about the house using violent and threatening language toward those within the house, and otherwise conducting himself in a rude and boisterous manner to the great terror and fear of the inmates of the house and this deponent further says that immediately on hearing the alarm he went to the front door opening on Madison Street to ascertain the cause of the alarm, and while this deponent was standing in the doorway one Robert Curtis made a violent and unprovoked attack upon this deponent with a sharp instrument or knife usually called an Excelsior cutting and wounding him in a most frightful and dangerous manner and thereby disabling this deponent in so much that

From that time hitherto he has been confined to his room. and under the care of a Physician

And deponent further says that the night on which the aforesaid occurrence happened was very dark. and when this deponent went to the door he was unable to distinguish anything in consequence of the darkness. and further that the first intimation this deponent had of the approach of any one was a heavy blow with a sharp instrument inflicting a deep and dangerous wound upon his person whereby this deponent was disabled and his life greatly endangered as aforesaid

And this deponent further says that he is about to commence a suit in the Cook County Circuit Court against the said Robert G. Curtis to recover the damages he has sustained in consequence of the aforesaid injuries and that the benefit of whatever judgment may be obtained will be in danger unless the defendant be held to bail

Sworn & Subscribed before
me this 3^d day of June
A.D. 1854

J. W. Magill

L. D. Hoard Ck

Defendant Called Charles Hall who being duly sworn deposed and said. I am a black Adverser. reside on the corner of LaSalle & Madison Sts - was turning out my team on the night

of May 22^d first I heard cries of help and
going to the house saw two men on top of Curtis
and heard some one say "Kill him Kill him. Heard
some one say Cut his throat.

Chap Examined There was two men on top of Curtis
and two men coming down stairs

Elliot being duly sworn deposed and said I
live at the corner of LaSalle & Madison Streets
am a Chack Driver. On the night in question I
heard cries of murder I went into the house whence
the cries came and saw one man on top of Curtis
Magill was kneeling by the side of Curtis Magill
took the instrument from Curtis hand. There were
frequent cries of Cut his throat. Cut the named
top of a kitchen throat. There was a light then
I saw considerable blood on the floor Saw blood
on Curtis face plenty of it did not notice that Curtis
face was cut. Some body was on Curtis neck & chest
Curtis was lying 10. or 12 feet from door

Chap Exd It was not very dark not much
gas light in that part of the town. It was consider-
able after gas hours

Gustavus M. King Testified I am acquainted with Magill
Curtis having boarded at the same house with them
Since last fall I never heard Magill make threats
against Curtis. The bell was rung one night
when I was at the house. I went out and saw
no one It seems to me that Magill said he had
been out of the room on one occasion and looked

about for some one who was making disturbance but
could find no one. I heard at Mrs Youngs now
Robert B Morrison

Being sworn says I heard at Mrs Youngs
I have known of no concert between Magill and
Others to whip Curtis I was in my Bed and saw
nothing of the commencement of the scuffle I have
often heard it said among the boarders that Curtis
ought to be whipped

Crap Examined I am of the firm of Gray
Morrison & Co I still heard at Mrs Youngs
Darius Knight Sworn Says I am acquainted with
Magill & Curtis I recollect this affray I saw Magill
out of doors one week ago last Sunday night

Crap Examined I met Magill on the side walk
within 20 feet of his boarding house. he was coming
down Madison Street

J D Sully Sworn Says I am acquainted with Magill
and Curtis. I saw Magill one week ago last
Sunday night near the door of the house where
he boarded on Madison Street

James H Hanbury Sworn Says I am acquainted with
Mr Curtis Mr Magill & Mr Young Whitely was then asked
the following question to wit: Did Mr Young ever apply
to you for a pistol for the purpose of using upon
Mr Curtis. To this question the People by their Counsel
Objected and the Judge Sustained the Objection to
which said ruling of the Court the Defendant by
his counsel then and there Objected Excepted
Walter Kirkhall. being duly sworn Says I am duly

of the Court of Common Pleas. The instrument which had been introduced in Evidence by the People was here shown the Witness. Witness said it was an erasure used for scraping paper Erasure is the usual name by which the instrument is known. It is bought and Sold as an Erasure and by that name. It is in constant use in all Offices. I can't swear that I ever saw this particular instrument it looks like one formerly used in my Office.

Curtis was recommended to me by Mr. Wells Clerk of the Court of Kane County. He has been in my Office since February 1853 I never heard anything against Curtis before this affray.

Philip Hagne Sworn The instrument above introduced in Evidence being shown the witness. witness said the instrument was an Erasure and that was the proper name of the instrument.

Samuel P. Putnam Sworn I went to the house on Madison Street for the purpose of arresting Mr. Curtis. Curtis was lying in the hall he was bleeding. There were bruises on his face. There was some blood in the Vestibule. There was a great deal more in the room where he lay.

Regan Sworn testified a Capias was delivered to me last Saturday Night near 10 O'clock in the Case of Magill vs Curtis. Magill gave it to me he told him to arrest him that Night as he had been informed Curtis was going away. This was all the Evidence Submitted in this Case by the

Defendant And the Defendant in this cause
prays the Court to sign and seal this bill of
Exceptions and make it a part of the record in this
Case which is done

C. S. Wilson (Seal)
Recorder

State of Illinois
County of Cook

City of Chicago I Philip A. Heywood Clerk of
the Recorder Court of the City of Chicago in said
County and State do hereby Certify that the above
and foregoing is a true and correct copy of
the Record and proceedings had in the
above entitled Cause as appear from the files
in my office

Witness Philip A. Heywood Clerk of
said Court and the Seal thereof at
Chicago this 17th July 1854

Philip A. Heywood
Clerk

[2190-13]

13.

Robert G. Curtis
^{vs.}
The People &c.

Records

Filed July 26th 1854.
L. Leland Clk.
By P. H. Leland copy.

13. 3

Robert G. Curtis
vs.
The People &c.

B. P. D.

12/90

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